

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1685 OF 2024

Vikas @ Vicky Rohidas Funde .. Petitioner
Versus
The State of Maharashtra and ors. .. Respondents
...

Mr. Shailesh Kharat for the petitioner.
Mr. S.V. Gavand, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 18th JULY, 2024

P.C:-

1 The order of detention dated 9/11/2023, passed by the Commissioner of Police, Pune City, is assailed in the Petition filed by the detenu, who is ordered to be detained under the provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers (Drug- offenders, Dangerous persons and video pirates) Act, 1981, as the Detaining Authority is satisfied that it is necessary to detain him so as to prevent him from acting in any manner prejudicial to the maintenance of public order.

2 We have heard learned counsel Mr. Kharat for the petitioner and Mr. Gavand, learned APP for the State.

Mr. Gavand has placed before us the affidavit affirmed by Mr. Amitesh Kumar, the present Commissioner of Police, Pune City and though we have taken the affidavit on record, we must note

that the detention order is passed by the then Commissioner of Police, Pune city, Mr. Retesh Kumaarr, and the grounds of the detention are furnished to the detenu by the erstwhile Commissioner of Police, Pune City.

The affidavit filed by the present Commissioner therefore, definitely cannot and do not reflect the subjective satisfaction reached by the Detaining Authority, who has passed the impugned order and who has communicated the grounds of detention to the detenu. The affidavit filed as stated in paragraph no.1 is based on the record and files pertaining to the detention order, which according to the deponent of the affidavit is believed to be true.

We must make it very clear to Mr. Gavand the learned APP, that whenever the detention order is passed by a particular authority, the affidavit must be affirmed by the said authority, as his successor definitely cannot discern the subjective satisfaction reached by his predecessor.

We except that the public prosecutors appearing for the Detaining Authority, to keep this aspect in mind.

Mr. Gavand has informed, that the erstwhile Detaining Authority has been transferred and promoted as Head of Home Guard Division Mumbai.

3 Mr. Kharat has referred to various grounds in the petition raising a challenge to the order of detention, but the prime ground raised by him is contained in paragraph no. (c) which reads to the following effect:-

“c. The impugned Order of Detention was issued on 9th November, 2023. The Petitioner was arrested on 09-10-2023. On the date of issuance of Order of Detention, the detenu was in custody in CR No.253 of 2023 and 258 of 2023 of Sahkar Nagar Police Station. The Applicant had not even applied for bail therefore, there is no question of his release on bail. The Detaining Authority was aware that the detenu was already in judicial custody. However, the Detaining Authority has not disclosed any possibility of detenu being released on bail. The Detaining Authority has not disclosed any cogent material and facts which necessitated the making of Detention Order. The valid Detention Order can only be passed against the detenu if the Detaining Authority is subjectively satisfied that there is real and imminent possibility of the detenu being released on bail based on cogent material. The satisfaction of the Detaining Authority is vitiated as it is not based on any cogent material.”

4 Since we are not referring to the affidavit of the Detaining Authority, as it is not filed by the officer, who has passed the detention order, we have perused the grounds of detention.

In the grounds of detention the Detaining Authority has relied upon two C.Rs for reaching a subjective satisfaction that the activities of the detenu are detrimental to public interest and these C.Rs are registered with Sahakar Nagar Police Station being C.R No.253/2023 as well as C.R. No.258 of 2023.

C.R. No.253 of 2023, invoke Section 307 of IPC as well as Section 4 (25) of the Arms Act and Section 37(1) (3)/135 of the Maharashtra Police Act along with the Criminal Law Amendment Act. In this C.R. the detenu came to be arrested on 9/10/2023, pursuant to its registration on 5/10/2023. Prior to this, C.R No. 258/2023 registered under the Arms Act as well as the provisions of Police Act, where he is already arrested on 6/10/2023.

5 The specific grounds raised by the petitioner, is that he has never applied for bail in these C.Rs and in paragraph no.8 of grounds of detention the Detaining Authority has merely assumed that in future he may be granted bail under the ordinary law of land, as the offence is not compulsorily punishable with death sentence. Recording that in view of tendencies and inclinations reflected in the offences committed by him as well as incidents recorded in in-camera statements, the Detaining Authority was satisfied that after availing bail facility and becoming a free person, he is again likely to revert to similar activities, and since his activities are prejudicial to the maintenance of public order in future and therefore, it is necessary to detain him to prevent him from acting in such prejudicial manner.

6 We note that since 6/10/2023, the detenu is in custody and on the date of passing of detention order, he was not a free man and as Mr. Kharat has specifically mentioned that even till today he is incarcerated and not being released on bail.

It is in these background fact that the apprehension expressed by the Detaining Authority that in future if he may be released on bail, he may indulge in activities is merely an assumption, which is totally unfounded. The Detention Order being passed is necessary to prevent the detenu from continuing his activities, provided he is a free man, but in this case he is already incarcerated, which position even continue till date, and hence we must record that the Detaining Authority has not applied his mind to the necessary fact that the detenu was not a free man, so that the possibility he indulging in a similar activity, which would be prejudicial to public order, was nothing but a non-existent ground.

On being satisfied that there was no application of mind by the Detaining Authority, the impugned order of detention dated 9/11/2023, is quashed and set aside.

Writ Petition is allowed. The petitioner is directed to be released forthwith.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)